

1 A bill to be entitled
 2 An act relating to the Guaranteed Energy, Water, and
 3 Wastewater Performance Savings Contracting Act;
 4 amending s. 489.145, F.S.; revising the terms
 5 "agency," "energy, water, and wastewater efficiency
 6 and conservation measure," and "energy, water, or
 7 wastewater cost savings"; providing that a contract
 8 may provide for repayments to a lender of an
 9 installation construction loan in installments for a
 10 period not to exceed 20 years; requiring a contract to
 11 provide that repayments to a lender of an installation
 12 construction loan may be made over time, not to exceed
 13 20 years from a certain date; requiring a contract to
 14 provide for a certain amount of repayment to the
 15 lender of the installation construction loan within 2
 16 years of a specified date; authorizing certain
 17 facility alterations to be included in a performance
 18 contract and to be supervised by the performance
 19 savings contractor; limiting the time allotted to the
 20 Office of the Chief Financial Officer to review and
 21 approve an agency's guaranteed energy, water, and
 22 wastewater performance savings contract; requiring
 23 that a proposed contract include an investment grade
 24 audit certified by the Department of Management
 25 Services which states that the cost savings are
 26 appropriate and sufficient for the term of the
 27 contract; clarifying that for funding purposes of
 28 consolidated financing of deferred payment commodity

29 | contracts an agency means a state agency; conforming
 30 | language; providing an effective date.

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32 | Be It Enacted by the Legislature of the State of Florida:

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34 | Section 1. Paragraphs (a) through (c) of subsection (3),
 35 | paragraphs (c) and (j) of subsection (4), and subsections (5)
 36 | through (7) of section 489.145, Florida Statutes, are amended to
 37 | read:

38 | 489.145 Guaranteed energy, water, and wastewater
 39 | performance savings contracting.—

40 | (3) DEFINITIONS.—As used in this section, the term:

41 | (a) "Agency" means the state, a municipality, ~~or a~~
 42 | political subdivision, a county or city school district, or an
 43 | institution of higher education, including all state
 44 | universities, colleges, and technical colleges.

45 | (b) "Energy, water, and wastewater efficiency and
 46 | conservation measure" means a training program incidental to the
 47 | contract, facility alteration, or equipment purchase to be used
 48 | in a building retrofit, addition, or renovation, or in new
 49 | ~~construction, including an addition to existing facilities or~~
 50 | ~~infrastructure,~~ which reduces energy or water consumption,
 51 | wastewater production, or energy-related operating costs and
 52 | includes, but is not limited to:

53 | 1. Installing or modifying:

54 | a. Insulation of the facility structure and systems within
 55 | the facility.

56 | b.2. Window and door systems that reduce energy

57 | consumption or operating costs, such as storm windows and doors,
 58 | caulking or weatherstripping, multiglazed windows and doors,
 59 | heat-absorbing, or heat-reflective, glazed and coated window and
 60 | door systems, additional glazing, and reductions in glass area,
 61 | ~~and other window and door system modifications that reduce~~
 62 | ~~energy consumption.~~

63 | c.3. Automatic energy control systems.

64 | ~~4. Heating, ventilating, or air-conditioning system~~
 65 | ~~modifications or replacements.~~

66 | ~~5. Replacement or modifications of lighting fixtures to~~
 67 | ~~increase the energy efficiency of the lighting system, which, at~~
 68 | ~~a minimum, must conform to the applicable state or local~~
 69 | ~~building code.~~

70 | d.6. Energy recovery systems.

71 | e.7. Cogeneration systems that produce steam or forms of
 72 | energy such as heat, as well as electricity, for use primarily
 73 | within a facility or complex of facilities.

74 | ~~8. Energy conservation measures that reduce British~~
 75 | ~~thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh)~~
 76 | ~~consumed or provide long-term operating cost reductions.~~

77 | f.9. Renewable energy systems, such as solar, biomass, or
 78 | wind systems.

79 | g.10. Devices that reduce water consumption or sewer
 80 | charges.

81 | h.11. Energy storage systems, such as fuel cells and
 82 | thermal storage.

83 | i.12. Energy-generating technologies, such as
 84 | microturbines.

- 85 | j. Automated, electronic, or remotely controlled
- 86 | technologies, systems, or measures that reduce utility or
- 87 | operating costs.
- 88 | k. Software-based systems that reduce facility management
- 89 | or other facility operating costs.
- 90 | 1. Energy information and control systems that monitor
- 91 | consumption, redirect systems to optimal energy sources, and
- 92 | manage energy-using equipment.
- 93 | 2. Replacing or modifying:
- 94 | a. Heating, ventilating, or air-conditioning systems.
- 95 | b. Lighting fixtures to increase the energy efficiency of
- 96 | the lighting system without increasing the overall illumination
- 97 | of a building, unless the increase in illumination is necessary
- 98 | to conform to the applicable state or local building code.
- 99 | 3. Implementing a program to reduce energy costs through
- 100 | rate adjustments, load shifting to reduce peak demand, or the
- 101 | use of alternative energy suppliers, including, but not limited
- 102 | to, demand response programs, changes to more favorable rate
- 103 | schedules, negotiation of lower rates using new suppliers, or
- 104 | auditing utility billing and metering.
- 105 | 4. An improvement that reduces solid waste and associated
- 106 | removal costs.
- 107 | 5. Meter replacement, installation of an automated meter
- 108 | reading system, or other construction, modification,
- 109 | installation, or remodeling of water, electric, gas, fuel,
- 110 | communication, or other supplied utility system.
- 111 | 6. Any other energy conservation measure that reduces
- 112 | British thermal units (Btu), kilowatts (kW), or kilowatt hours

113 (kWh); reduces fuel or water consumption in the building or
 114 waste water production; or reduces an operating cost or provides
 115 long-term cost reductions.

116 ~~7.13.~~ Any other repair, replacement, or upgrade of
 117 existing equipment that produces measurable savings, or any
 118 other construction, modification, installation, or remodeling
 119 that is approved by an agency and that is within the legislative
 120 authority granted the agency, such as an energy conservation
 121 measure.

122 8. Any other measure not otherwise defined in this chapter
 123 which is designed to reduce utility consumption, revenue
 124 enhancements, wastewater cost savings, avoided capital costs, or
 125 similar efficiency gains to a governmental unit.

126 (c) "Energy, water, or wastewater cost savings" means a
 127 measured reduction in the cost of fuel, energy or water
 128 consumption, wastewater production, ~~and~~ stipulated operation and
 129 maintenance, and identified avoided capital savings created from
 130 the implementation of one or more energy, water, or wastewater
 131 efficiency or conservation measures when compared with an
 132 established baseline for the previous cost of fuel, energy or
 133 water consumption, wastewater production, ~~and~~ stipulated
 134 operation and maintenance, and identified avoided capital costs.

135 (4) PROCEDURES.—

136 (c) An ~~The~~ agency may enter into a guaranteed energy,
 137 water, and wastewater performance savings contract with a
 138 guaranteed energy, water, and wastewater performance savings
 139 contractor if the agency finds that the amount the agency would
 140 spend on an ~~the~~ energy, water, and wastewater efficiency and

141 | conservation measure is unlikely to ~~measures will not likely~~
 142 | exceed the amount of the cost savings for up to 20 years after
 143 | ~~from~~ the date of installation, based on the life cycle cost
 144 | calculations provided in s. 255.255, if the recommendations in
 145 | the report were followed and if the qualified provider or
 146 | providers give a written guarantee that the cost savings will
 147 | meet or exceed the costs of the system. However, actual computed
 148 | cost savings must meet or exceed the estimated cost savings
 149 | provided in each agency's program approval. Baseline adjustments
 150 | used in calculations must be specified in the contract. The
 151 | contract may provide for repayment to the lender of the
 152 | installation construction loan through installment payments for
 153 | a period not to exceed 20 years.

154 | (j) In determining the amount the agency will finance to
 155 | acquire the energy, water, and wastewater efficiency and
 156 | conservation measures, the agency may reduce such amount by the
 157 | application of ~~any~~ grant moneys, rebates, or capital funding
 158 | available to the agency for the purpose of buying down the cost
 159 | of the guaranteed energy, water, and wastewater performance
 160 | savings contract. However, in calculating the life cycle cost as
 161 | required in paragraph (c), the agency shall not apply any
 162 | grants, rebates, or capital funding.

163 | (5) CONTRACT PROVISIONS.—

164 | (a) A guaranteed energy, water, and wastewater performance
 165 | savings contract must include a written guarantee that may
 166 | include, but is not limited to the form of, a letter of credit,
 167 | insurance policy, or corporate guarantee by the guaranteed
 168 | energy, water, and wastewater performance savings contractor

169 that annual cost savings will meet or exceed the amortized cost
 170 of energy, water, and wastewater efficiency and conservation
 171 measures.

172 (b) The guaranteed energy, water, and wastewater
 173 performance savings contract must provide that all repayments
 174 ~~payments~~ to the lender of the installation construction loan,
 175 except obligations on termination of the contract before its
 176 expiration, may be made over time, but may not ~~to~~ exceed 20
 177 years from the date of complete installation and acceptance by
 178 the agency, and that the annual savings are guaranteed to the
 179 extent necessary to make annual payments to satisfy the
 180 guaranteed energy, water, and wastewater performance savings
 181 contract.

182 (c) The guaranteed energy, water, and wastewater
 183 performance savings contract must require that the guaranteed
 184 energy, water, and wastewater performance savings contractor to
 185 whom the contract is awarded provide a 100-percent public
 186 construction bond to the agency for its faithful performance, as
 187 required by s. 255.05.

188 (d) The guaranteed energy, water, and wastewater
 189 performance savings contract may contain a provision allocating
 190 to the parties to the contract ~~any~~ annual cost savings that
 191 exceed the amount of the cost savings guaranteed in the
 192 contract.

193 (e) The guaranteed energy, water, and wastewater
 194 performance savings contract must ~~shall~~ require the guaranteed
 195 energy, water, and wastewater performance savings contractor to
 196 provide to the agency an annual reconciliation of the guaranteed

197 energy or associated cost savings. If the reconciliation reveals
 198 a shortfall in annual energy or associated cost savings, the
 199 guaranteed energy, water, and wastewater performance savings
 200 contractor is liable for such shortfall. If the reconciliation
 201 reveals an excess in annual cost savings, the excess savings may
 202 be allocated under paragraph (d) but may not be used to cover
 203 potential energy or associated cost savings shortages in
 204 subsequent contract years.

205 (f) The guaranteed energy, water, and wastewater
 206 performance savings contract must provide for repayment ~~payments~~
 207 to the lender of the installation construction loan of not less
 208 than one-twentieth of the price to be paid within 2 years from
 209 the date of the complete installation and acceptance by the
 210 agency using straight-line amortization for the term of the
 211 loan, and the remaining costs to be paid at least quarterly, not
 212 to exceed a 20-year term, based on life cycle cost calculations.

213 (g) The guaranteed energy, water, and wastewater
 214 performance savings contract may extend beyond the fiscal year
 215 in which it becomes effective; however, the term of a ~~any~~
 216 contract expires at the end of each fiscal year and may be
 217 automatically renewed annually for up to 20 years, subject to
 218 the agency making sufficient annual appropriations based upon
 219 continued realized energy, water, and wastewater savings.

220 (h) The guaranteed energy, water, and wastewater
 221 performance savings contract must stipulate that it does not
 222 constitute a debt, liability, or obligation of the state.

223 (i) A facility alteration that includes expenditures that
 224 are required to properly implement other energy conservation

225 | measures may be included as part of a performance contract. In
 226 | such case, notwithstanding any provision of law, the
 227 | installation of these additional measures may be supervised by
 228 | the performance savings contractor.

229 | (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The
 230 | Department of Management Services, with the assistance of the
 231 | Office of the Chief Financial Officer, shall, within available
 232 | resources, provide technical content assistance to state
 233 | agencies contracting for energy, water, and wastewater
 234 | efficiency and conservation measures and engage in other
 235 | activities considered appropriate by the department for
 236 | promoting and facilitating guaranteed energy, water, and
 237 | wastewater performance contracting by state agencies. The
 238 | Department of Management Services shall review the investment-
 239 | grade audit for each proposed project and certify that the cost
 240 | savings are appropriate and sufficient for the term of the
 241 | contract. The Office of the Chief Financial Officer, with the
 242 | assistance of the Department of Management Services, shall,
 243 | within available resources, develop model contractual and
 244 | related documents for use by state agencies. Before ~~Prior to~~
 245 | entering into a guaranteed energy, water, and wastewater
 246 | performance savings contract, a ~~any~~ contract or lease for third-
 247 | party financing, or any combination of such contracts, a state
 248 | agency shall submit such proposed contract or lease to the
 249 | Office of the Chief Financial Officer for review and approval.
 250 | The Office of the Chief Financial Officer shall complete its
 251 | review and approval within 10 business days after receiving the
 252 | proposed contract or lease. A proposed contract or lease must

253 | ~~shall~~ include:

254 | (a) Supporting information required by s. 216.023(4)(a)9.
 255 | in ss. 287.063(5) and 287.064(11). For contracts approved under
 256 | this section, the criteria may, at a minimum, include the
 257 | specification of a benchmark cost of capital and minimum real
 258 | rate of return on energy, water, or wastewater savings against
 259 | which proposals shall be evaluated.

260 | (b) Documentation supporting recurring funds requirements
 261 | in ss. 287.063(5) and 287.064(11).

262 | (c) Approval by the head of the agency or his or her
 263 | designee.

264 | (d) An agency measurement and verification plan to monitor
 265 | cost savings.

266 | (e) An investment-grade audit, certified by the Department
 267 | of Management Services, which states that the cost savings are
 268 | appropriate and sufficient for the term of the contract.

269 | (7) FUNDING SUPPORT.—For purposes of consolidated
 270 | financing of deferred payment commodity contracts under this
 271 | section by a state ~~an~~ agency, any such contract must be
 272 | supported from available funds appropriated to the state agency
 273 | in an appropriation category, as defined in chapter 216, that
 274 | the Chief Financial Officer has determined is appropriate or
 275 | that the Legislature has designated for payment of the
 276 | obligation incurred under this section.

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 278 | The Office of the Chief Financial Officer shall not approve any
 279 | contract submitted under this section from a state agency that
 280 | does not meet the requirements of this section.

PCS for HB 1357

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281 | Section 2. This act shall take effect July 1, 2013. |